

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2124 of 1997

with

SPECIAL CIVIL APPLICATION No 2125 of 1997

with

SPECIAL CIVIL APPLICATION NO. 2231 of 1997

with

SPECIAL CIVIL APPLICATION NO. 9326 of 1994

with

SPECIAL CIVIL APPLICATION NO. 9327 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No.

SURENDRANAGAR DIST PANCHAYAT

Versus

UPENDRA H VYAS

Appearance:

Special Civil Application No. 2124, 2125, 2231 of 1997
and Special Civil Application Nos. 9326 and 9327 of

1994.

MR HS MUNSHAW for Petitioner

MR NAGESH SOOD FOR AD PADIVAL for Respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 11/04/97

ORAL JUDGEMENT

Heard learned counsel. These five Special Civil Applications involve common questions of fact and law and same are being decided by this common order. The respondents-workmen being erstwhile employees of the petitioner-panchayat in each case faced termination of their services and the matter was taken to the Labour Court. Each one of the respondent workman in each one of the case was directed to be reinstated with full backwages and being aggrieved by the same the petitioner panchayat had preferred Special Civil Applications before this Court. With the consent of the parties the Award passed by the Labour Court was set aside and the following order was substituted.

"The respondent workmen in each petition will be reinstated in service to their original post with 50% back wages and continuity in service without a break. Each respondent will be placed in the same scale in which he was at the date of the termination in question and thereafter, be brought on to the new scale, if any,. The back wages will be paid to the workmen within three months from the receipt of the writ of this Court. The order as to payment of costs will stand. Rule made absolute accordingly with no order as to costs."

Then arose the dispute of implementation of the above order and the workmen moved this Court by way of separate writ petition seeking direction for the implementation of the above order. This Court directed the workmen to approach the Labour Court through recovery application for the amount payable under the Award and with this observation the petitions were rejected. The workmen then approached the Labour Court seeking recovery of the payable amount under the award as substituted by this Court in the terms as aforesaid.

It was contended on behalf of the petitioner panchayat before the Labour Court that during the period

between termination and reinstatement for some time the workmen had been employed by the panchayat in other projects and the emoluments paid for such period were deducted. The panchayat was legitimately entitled to deduct 50% of the backwages on the basis of this Court's order passed on 5.2.1988 while substituting the Award passed by the Labour Court. This plea of the panchayat was rejected by the Labour Court as in its opinion the Award was not conditioned by any such contingency for any gainful employment obtained by the workmen during the intervening period, and only the amount of 50% of the backwages was required to be adjusted. Obviously the Labour Court is justified in coming to such conclusion. It was not the intent or the purport of the order passed by this Court as referred to above that it enabled the employer to recover the fruits of the gainful employment during the intervening period while awarding 50% of the backwages. The course adopted by the petitioner panchayat of deducting such amount in the face of the order of this Court was exfacie unjust and could not be supported or defended on any ground. The act of the panchayat in deducting the said amount clearly amounted to substitute the order passed by this Court to its own understanding. This part of the order by the Labour Court, therefore, does not require any interference by this Court.

Other grievance of the petitioner panchayat is that while determining the question of recovery under the aforesaid order passed by the Division Bench of this Court, the Labour Court had allowed the recovery of 100% backwages.

The learned counsel for the panchayat contends that the Labour Court had no jurisdiction to add, alter or substitute any part of the order passed by this Court. On the other hand, it was contended by the learned counsel for the respondents workmen that admittedly the order passed by this Court was on consent of the parties and when the panchayat failed to implement the order passed by the High Court the workmen became entitled to 100% backwages as awarded by the Labour Court originally.

The contention of the learned counsel for the respondent in this regard can not be accepted merely because the order passed by this Court was based on consent of the parties and not by adjudication. So far as the force and operation of the order is concerned, no distinction can be made on this ground. Once the order had become final between the parties, the same could not

be altered, modified or varied by subordinate courts or tribunals in the guise of interpreting the terms of the order in any manner which has been done by the Labour Court. The clear directive of the Court was reinstatement of concerned workmen with continuity of service and 50% of the backwages. Further directive was to reinstate the workmen in the same payscale in which they were working at the time of termination of their services, in future they were to be brought to new payscale. If any one of the directives is not complied the workmen were entitled to seek remedy for enforcement of such directives, but they could not seek revival of the Labour Court's order which had been set aside by this Court merely because the directives of this Court had not been implemented. By passing the order or direction for payment of 100% backwages, the Labour Court has substituted new Award between the parties contrary to the decision of this Court. The order of this Court was not subject to the condition that if the employer fails to implement any part of the directives, the Award of the Labour Court regarding payment of 100% backwages would become operative. However, the order being absolute in terms, the Labour Court had no jurisdiction to sit over the effect of the Order or the Award by substituting its own wisdom regarding payment of backwages simply because the employer had failed to fulfill the other directions.

After considering all these aspects the Court finds that the petitions deserve to succeed in part. The order of the Labour Court to the extent it had been passed against the petitioners regarding deduction of 50% of the backwages payable to the workmen under the direction of this Court is concerned, the same is correct and can not be interfered with. However, to the extent it directed 100% of the backwages the order can't be sustained and accordingly the same is set aside. In the facts and circumstances of this case the petitioner shall pay the costs of this petition to the respondents workmen which is quantified at Rs.250/- to each workman. In case the petitioners have not placed all the workmen in regular running payscale but they have merely placed them in the minimum of the payscale, that is not the correct interpretation of the order of this Court in its entirety. The petitioner shall implement the order and place them in the running payscale within a period of six months from the date of the receipt of the certified copy of this order. After reinstating the workmen in the payscale in which they were working at the time of their termination, directives of bringing them to the new payscale clearly mean to bring them to the new payscale at appropriate stage and not to fix them at the minimum

of such payscale. The dispute concerning fixation in new payscale etc.if any are kept open and the workmen shall be at liberty to raise the same before the appropriate forum in accordance with law.

All these five Special Civil Applications are therefore partly allowed in the terms as aforesaid and Rule in each of the Special Civil Applications is hereby made absolute accordingly. No order as to costs.

m.m.bhatt